

Remarks

Interview Summary

The Applicant thanks the Examiner for the interview on October 20, 2010. During the interview, the prior art status of U.S. Patent No. 6,691,218 (Brown '218) was discussed. An agreement was reached that Brown '218 is disqualified as prior art to the present application under 35 U.S.C. § 102(e) because Brown '218 is not "by another."

Status of the Claims

Claims 26-49 are pending in the application, of which claims 26, 32, 38, and 44 are in independent form. Claims 50-56 are new. No new matter has been added.

The Office action mailed June 22, 2010 rejected claims 26-49 under 35 U.S.C. § 102(e) as being allegedly anticipated by Brown '218. The Applicant respectfully asserts that the claims are patentable over Brown '218 for at least the reasons that follow.

Brown '218 Is Not Prior Art Under § 102(e)

According to § 102(e), a "person shall be entitled to a patent unless . . . the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent" 35 U.S.C. § 102(e) (emphasis added).

Both the present application and Brown '218 list David A. Brown as the sole inventor and were/are commonly owned. Further, U.S. Provisional Application Nos. 60/170,232 and 60/212,966 to which Brown '218 claims priority list David A. Brown as the sole inventor. Thus, even if Brown '218 is entitled to an earlier effective filing date, Brown '218 cannot constitute prior art under § 102(e) for the simple reason that Brown '218 is not "by another." See, e.g., MPEP § 706.02(f) (in order to apply a reference under 35 U.S.C. § 102(e), the inventive entity of the application must be different than that of the reference). Accordingly, it is respectfully submitted that the rejection of claims 26-49 under 35 U.S.C. § 102(e) should be withdrawn without a showing under 37 C.F.R. §§ 1.131 or 1.132.

Further, Applicant notes that the present application and Brown '218 were, at the time the claimed invention was made, owned by, or subject to an obligation of assignment to, the same person or organization. As such Brown '218 is disqualified as prior art for obviousness purposes under 35 U.S.C. § 103(c).

Claim Amendments

Dependent claims 27-31, 33-37, 39-43, and 45-49 have been amended to, for example, clarify potentially unclear language and correct minor grammatical and typographical errors. Those dependent claims are patentable for at least the reasons stated above.

New Claims 50-56

New dependent claims 50-56 are submitted to more completely claim the invention and are patentable for at least the reasons stated above. No new matter has been added. For example, support for the subject matter of new claims 50 and 56 can at least be found in Figures 2 and 3B, page 6, line 11 through page 8, line 12, page 8, line 26 through page 9, line 6, page 15, lines 12-15, and page 17, lines 3-16 of the originally filed application. Support for the subject matter of new claim 51 can at least be found in Figures 2 and 3B, page 8, lines 7-12, and page 16, line 25 through page 17, line 2 of the originally filed application. Support for the subject matter of new claim 52 can at least be found in Figures 2, 3B, and 6, page 11, lines 25-29, and page 15, line 12-24 of the originally filed application. Support for the subject matter of new claims 53 and 55 can at least be found in Figures 2, 3A, and 3B and page 11, line 25 through page 12, line 21 of the originally filed application. Support for the subject matter of new claim 54 can at least be found in Figure 3B, page 7, line 27 through page 8, line 6, and page 11, line 25 through page 12, line 11 of the originally filed application.

Conclusion

In view of the foregoing, the Applicant submits that all claims are in condition for allowance. The Applicant, therefore, respectfully requests that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,

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